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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,820	03/12/2004	Marc Joseph Thomas Lebert	4316-043718	8364

7590

10/24/2005

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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,820	THOMAS LEBERT, MARC JOSEPH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fenn C. Mathew	3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/14/04 08/22/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3, 7, 10-19, 21, 23-28 are rejected under 35 U.S.C. 102(b) as being anticipated by McPhilomy (U.S. 5,334,121). Referring to claim 1, McPhilomy discloses an elongate substantially upright weight-bearing portion (78), the weight-bearing portion including a transverse section and two upstanding sections extending from the transverse section at about a ninety-degree angle therefrom, the transverse section including a gripping portion extending across a top of the device, the weight-bearing portion having an open bottom and generally lying in a first plane, a pair of ground-engaging feet, each positioned on one of the two upstanding sections, the feet extending outwardly from the plane to stabilize the upright weight-bearing without interfering with the open bottom, the feet being spaced apart to permit the positioning of a user between the feet so as to be clear of interference from the feet, the feet and weight-bearing portion being configured so that the mass of the device is generally balanced about the first plane, the transverse and upstanding sections being substantially rigid. Referring to claim 2, McPhilomy teaches the feet comprising elongate elements oriented substantially perpendicular to the plane. Referring to claim 3, McPhilomy discloses a device that when assembled maintains a fixed height for the gripping means and fixed distance between the feet. Referring to claim 7, McPhilomy teaches the gripping portion being substantially round in cross-section. Referring to

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claims 10-14, McPhilomy teaches upstanding portion heights that lead to gripping portion height distanced from the ground, falling within the claimed ranges (column 4, lines 30-35). Referring to claim 15, as best understood, the McPhilomy device is sized, shaped, and positioned to permit the device to be stored in a nested configuration with one or more devices. Claims 16-19, 21, 23-28 are substantially similar in scope to the claims cited above. Examiner notes that McPhilomy teaches multiple devices where distance and angle of placement are chosen by the user.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 4-6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPhilomy alone. Absent criticality limitations drawn to specific diameters of the tubing is considered a matter of ordinary design choice. Furthermore, the choice of material is also considered a matter of design choice absent criticality. Additionally, the use of metal for hurdles is notoriously old and well known in the art (as evidenced by Quinn U.S. 3,685,824).

5. Claims 8-9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McPhilomy in view of Sellge, Jr. McPhilomy teaches the claimed invention except for rubber feet which inhibit sliding of the device. Sellge, Jr. teaches an analogous device including rubber feet to prevent unwanted sliding. In view of the teachings of

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Sellge, Jr., it would have been obvious to one of ordinary skill to provide McPhilomy with rubber feet in order to prevent unwanted sliding.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ycm  
fcm

October 18, 2005

  
PRIMARY EXAMINER